

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5707 of 1984

Date of decision: 11-7-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BAI DALIBEN RAMSANG

Versus

MOHANLAL CHHAGANLAL DOHSI  
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Appearance:

MR DF AMIN for Petitioner

MR MUKUND M DESAI for Respondent No. 1

Mr. S. R. Divetia for Respondent No. 2  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/07/97

## ORAL JUDGEMENT

Heard the learned counsel for the parties.

This case has a checkered history and as such the facts are taken in detail. The original owner of the land bearing Survey No.196 admeasuring 1 acre 16 gunthas situated at village Jalat, Taluka Dahod sold the said land to respondent No.1 Mohanlal Chhaganlal Doshi without obtaining prior permission from the competent authority. The Deputy Collector of Dohad vide his order dated 5-1-1972 forfeited the said land to the Government and entry to that effect appear at serial No.1333 dated 10-8-72 in the revenue records. The Deputy Collector decided to dispose of the said land, and four persons including the petitioner and respondent No.1 applied for purchase of the said land. Applications of the two persons other than the petitioner and respondent No.1 were rejected on the ground that they have no agricultural implements. The application of the petitioner came to be rejected on the ground that she was holding land in excess of the economic holding. Application of respondent No.1 came to be accepted by the Deputy Collector on the ground that his other land is situated adjoining to the land in dispute. Feeling aggrieved by the aforesaid order of the Deputy Collector the petitioner preferred appeal before the Collector, Godhra. The Collector, by his order dated 14-4-1976 set aside the order of the Deputy Collector, Dohad, and the matter was remanded back to the said authority for fresh decision.

2. The Deputy Collector, Dohad, thereafter by his order dated 21st December, 1976 granted the said land to Virsingh Narsingh. Feeling aggrieved by the said order, respondent No.1 preferred appeal before the Collector, Godhra at Panchmahals, which came to be dismissed under order dated 1-7-1979. Then the matter has been taken up by respondent No.1 before the Special Secretary(Revenue), at Ahmedabad in revision application, who, under order dated 26th October, 1978 allowed the revision application and remanded the case to the Collector, Godhra for deciding the same afresh after hearing the parties. The Collector, in turn, after hearing the parties remanded the case to the Deputy Collector, Dohad, by his order dated 3-7-1979. On remand the Deputy Collector, under his order dated 3-3-1980, granted the said land to respondent No.1. The petitioner, feeling aggrieved by the said order preferred appeal before the Collector, Godhra at Panchmahals which has been dismissed. Then the petitioner has taken up the matter in revision with the

Special Secretary (Appeals), Revenue Department at Ahmedabad. The revision application has been decided under order dated 31st July, 1982, which was allowed, and both the orders of the Deputy Collector and the Collector have been set aside. The matter has been remanded back to the Deputy Collector, Dohad, for deciding the same as per the Government's order dated 1-3-1960.

4. The Deputy Collector, after hearing the parties, by his judgment dated 30th June, 1983 granted the land to the petitioner. The Deputy Collector also directed the petitioner to deposit Rs.3750/- as market price of the said land, which amount indisputably has been deposited by the petitioner. Respondent No.1 felt aggrieved by this order, taken up the matter before the Collector, Godhra at Panchmahals. The Collector, by his order dated 1-3-1983 allowed the revision application and set aside the order of the Deputy Collector and remanded the matter back to the Deputy Collector for decision afresh. The petitioner felt aggrieved by the said order and approached this Court by filing special civil application No.4784 of 1983. In the mean time the petitioner came to know that respondent No.1 has filed revision application against the very order before the State Government, in which he has also joined as party, and the special civil application was withdrawn on 13th December, 1984. Respondent No.2, under his order dated 30th January, 1984 confirmed the order of the Collector dated 30th August, 1983. Hence this special civil application.

5. The counsel for the petitioner contended that all the authorities have misdirected themselves on the basic question on which the matter was remanded by respondent No.2 under his order dated 31st July, 1982. The order dated 31st July, 1982 is very specific and on those points which have been formulated therein the matter has to be considered. The authorities have recorded the finding of fact that the petitioner holds less area of land than respondent No.1. Further, the price which is to be paid by the petitioner as market price has also been fixed. There were only two persons who claimed the land and as such in terms of the resolution of the Government dated 1st March, 1960 the priority has to be decided which has been decided in the present case and as such no interference could have been made by the authorities below. There was no justification on the part of the collector to remand the matter back to the first authority to decide the matter, when the judgment has been passed in consonance with the order dated 31st July, 1982. On the other hand the counsel for the respondent supported the orders passed by the authorities

which are impugned in this petition.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Under order dated 31st July, 1982 at annexure-D the Deputy Secretary(Appeals), Revenue Department, Gujarat State, Ahmedabad, remanded the matter to the Deputy Collector for fresh decision after taking into consideration the priorities provided in the Government Resolution dated 1-3-1960, and after ascertaining the fresh market value of the disputed land and after giving adequate opportunity to the applicants to produce evidence and after taking into consideration the said evidence.

6. In view of the order of remand what the authorities have to ascertain is the priority of the parties, and to ascertain the market price of the land. There were only two claimants for this land. After remand of the matter the original authority under its order dated 4-7-1983 decided that the land in the Khata of the petitioner is less, while in the Khata of respondent No.1 there is land more than economic holding. Further finding is recorded that the land of the petitioner at survey No.195 is contiguous to survey No.196 (disputed land). So consistent with Government Resolutions dated 2-3-1960 and 16-11-1966, as well as with the view that the petitioner belongs to Scheduled Tribe, it has been ordered that the land should be permanently granted to the petitioner on payment of Rs.3750/-; and the Government has remanded the matter with the direction to hold inquiry on the point mentioned in its order dated 31-7-1982. When there were only two competing claimants for the land in dispute, I fail to see any justification for giving wide publicity for sale of the said land. Moreover, the said land was contiguous to the land of the petitioner and she has lesser land than respondent No.2. Further, she belongs to Scheduled Tribe, and her claim has rightly been accepted, and no interference could have been made with those orders. Earlier order of the State in revision application, dated 31st July, 1982 very specifically directed the authorities to inquire on the question raised therein about petitioner and respondent No.1 and to ascertain the market value. There were four claimants for this land and at one point of time the claim of two claimants was rejected, and they did not feel aggrieved by that decision. So there were only two contestants, the petitioner and respondent No.1. In view of these facts, the direction of the nature given in order dated 1-9-1983 passed by the Collector is wholly uncalled for in the

present case.

7. Now the only question which remains is that of market value of the land. It is not the case of the respondent State as well as respondent No.1 that the market value of the land in dispute should have been more than the amount decided by the first authority under order dated 4-7-1983. The market value has been determined by the said authority, and unless it could have been said that it was lesser than what the market value should have been, then the only question for fresh consideration would have arisen and not otherwise. It is not the finding of any of the authorities that the price of the land fixed by the first authority, to be paid by the petitioner, is less than the market value.

8. In the result, this special civil application succeeds, and the same is allowed. the order at annexure-B dated 1st September, 1983 passed by the Collector, Godhra, in Revision Application No.27 of 1983 and the order of the Special Secretary (Appeals), dated 30th January, 1984 at annexure-C are quashed and set aside. Rule made absolute. No order as to costs.

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